## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

SIEMENS MEDICAL SOLUTIONS USA, INC. :

Plaintiff,

Civil Action No. 07-cv-190

V.

SAINT-GOBAIN CERAMICS & PLASTICS,

:

Judge Robinson

INC.,

Defendants.

## SIEMENS' PROFFER REGARDING INVENTOR'S TESTIMONY REGARDING HIS RESEARCH CONDUCTED PRIOR TO THE ONSET OF THE LITIGATION

Siemens proffers Dr. Charles L. Melcher, inventor of the '080 patent, to testify according to his personal knowledge about his research regarding 10% Y LYSO as written in a manuscript prior to the commencement of this litigation. He would testify, consistent with his manuscript, that the crystal structures of LSO and 10% Y LYSO are the same, (PTX 343 at 9,) that he measured the decay times of LSO and 10% Y LYSO as 41.5 +/- 1.0 ns and 41.1 +/- 1.0 ns, respectively, (PTX 343 at 8-9,) that the emission and excitation spectra of the crystals are "virtually identical," (PTX 343 at 8,) and finally his conclusion that between LSO and 10% Y LYSO the "scintillation characteristics are indistinguishable." (PTX 343 at 10). Siemens not only proffers this testimony, but further proffers this unpublished article be admitted into evidence as PTX 343.

Siemens asserts this testimony and this article are relevant on their own to the equivalence issues in this case, but further asserts that counsel for Saint-Gobain has opened the door for the admission of this testimony and this article through its cross examination of Dr. Marvin Weber regarding the differences in crystal structure between LSO and 10% Y LYSO, (Trial Tr. 404:4 - 405:1), the substantiality of which this article expressly refutes.

Dated: September 22, 2008

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on September 22, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Kelly E. Farnan, Esquire RICHARDS, LAYTON & FINGER, P.A.

I also certify that copies were caused to be served on September 22, 2008, upon the following in the manner indicated:

## VIA ELECTRONIC MAIL

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